

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KAREN SCALIN, JOSIANE PIQUARD and)
ROLAND CHERRIER, on behalf of themselves)
and all others similarly situated,)
)
)
Plaintiffs,) Case No. 1:15-CV-03362
)
)
vs.) Judge Andrea R. Wood
)
)
SOCIÉTÉ NATIONALE DES CHEMINS)
DE FER FRANÇAIS,)
)
)
Defendant.)

**PLAINTIFFS' MOTION TO STRIKE NON-PARTY SERGE KLARSFELD'S
MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE TO SUBMIT AMICUS BRIEF**

Plaintiffs hereby move the Court to strike non-party Serge Klarsfeld's Memorandum in Support of Motion to Intervene to File Amicus Brief. (Doc. 40.) Mr. Klarsfeld filed his memorandum in contravention of the Court's order of September 23, 2015, (Doc. 37), and without Court permission.

On September 21, 2015, Mr. Klarsfeld filed his motion to intervene to submit an amicus brief, supporting Defendant's Rule 12(b) motion to dismiss the Complaint. (Doc. 30.) Plaintiffs opposed the motion. (*Id.* at 2.) On September 23, 2015, the Court entered an order pertinently providing:

MINUTE entry before the Honorable Andrea R. Wood: Serge Klarsfeld's motion to intervene to submit amicus brief [30] is taken under advisement. By 9/30/2015, Plaintiffs and/or Defendants in the instant action may file a short written statement of no more than 5 pages in support of or in opposition to the motion to intervene.

(Doc. 37.)

On September 30, 2015, around 4:00 p.m., Plaintiffs filed a brief opposing Mr. Klarsfeld's motion for four reasons:

- Mr. Klarsfeld's claimed dispute with Plaintiffs' factual recitation would not be helpful to the Court because for a Rule 12(b) motion, the facts are presumed true;
- Mr. Klarsfeld offered no discussion of legal standards for his proposed amicus participation;
- Defendant can make the same points as Mr. Klarsfeld; and
- Mr. Klarsfeld did not disclose facts suggesting that his support for Defendant is not objective because his son, a lawyer, has represented Defendant.

(Doc. 39.)

At 5:26 p.m. of the same day, Mr. Klarsfeld filed a "memorandum in support" of his motion to intervene. (Doc. 40.) It is not a supporting memorandum. It is a reply in which Mr. Klarsfeld offers post facto rationalizations for his omissions and unsupported representations, which Plaintiffs identified for him some 90 minutes earlier.

From the September 23 order, it appears the Court assumed that Mr. Klarsfeld had included in his motion all the support he intended to offer for the relief he sought. Plaintiffs assumed that, too: a movant usually substantiates a motion when filed. Mr. Klarsfeld's motion did not say a supporting brief was on the way or ask to file more paper. The Court took the motion under advisement and gave "Plaintiffs and/or Defendants" the chance to file statements supporting or opposing the motion. (Doc. 37.) Plaintiffs filed their opposition brief based on the information Mr. Klarsfeld included in his motion. The Court did not empower him to Mr. Klarsfeld to file anything else. So he filed his memorandum after Plaintiffs filed their opposition brief, without the Court's permission, and in derogation of the September 23 order.

Mr. Klarsfeld cannot proclaim his usefulness to the Court while on whim disregarding its orders, as he has done here. The Court indicated what it wanted, and that did not include reading

another memorandum from Mr. Klarsfeld. Accordingly, Plaintiffs respectfully submit that the Court should enter an order striking Mr. Klarsfeld's memorandum in support of his motion to intervene to submit amicus brief.

Dated: October 1, 2015

KAREN SCALIN, JOSIANE PIQUARD and
ROLAND CHERRIER,

By: /s/ Steven P. Blonder
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, certifies that on October 1, 2015, a copy of the foregoing was filed electronically via the Clerk of the Court's CM/ECF system and service was made on all parties or counsel with appearances of record.

/s/ Steven P. Blonder